

ELECTION

Applicant elects, with traverse, what the Examiner has characterized as species A, claims 1-31 being readable thereon.

REMARKS

The Examiner has identified three species in the pending application. The Examiner's classification of the species include Group A consisting of the embodiment as described in paragraph 13 of the specification, Group B consisting of the embodiment as described in paragraph 14 of the specification, and Group C consisting of the embodiment as described in paragraph 15 of the specification.

The Examiner's identification of species is based on specific paragraphs from within the specification. However, the Examiner has not identified any "species." Instead, the subject matter of each paragraph identified by the Examiner corresponds to a respective independent claim. That is, the Examiner identified Group A and cited paragraph 13 as illustrating such. One will readily recognize upon even a cursory review of claim 1 and the cited paragraph that the subject matter of the cited paragraph corresponds with the elements of claim 1. Similarly, with respect to Group B, the Examiner cited paragraph 14 in support of the identification of species. In this case, the subject matter of paragraph 14 corresponds to the elements of claim 14. Additionally, with respect to Group C, the Examiner cited paragraph 15 in support of the identification of species. As can readily be discerned, the subject matter of paragraph 15 corresponds to the elements of claim 28. Therefore, the Examiner has simply attempted to identify species based on claim elements of the independent claims. Identification of species based on claim elements of the independent claims is clearly improper.

MPEP §806.04(e) clearly sets forth that the Examiner's species restriction is improper because "[c]laims are definitions of inventions" and "[c]laims are never species." *MPEP §806.04(e), (emphasis in original)*. The Examiner's attempt to circumvent the rule by citing to portions of the specification is form over substance when the specification contains corresponding claim elements. Therefore, the Examiner effectively attempted to proffer a species election based solely on the claims. *See Id.* The Examiner cannot attempt to identify species based simply on the fact that there are multiple independent claims. The Examiner's attempt to sidestep the requirements of MPEP §806.04(e) is improper, and therefore, the restriction is not sustainable. The Examiner has not presented any proper grounds for a species restriction and has not provided any support for a species restriction. Thus the restriction must be withdrawn and the claims rejoined.

For all these reasons, Applicant respectfully requests rejoinder of all claims, of each group. The Examiner is invited to call the undersigned to discuss this election or any other matters regarding this application to further prosecution.

Respectfully submitted,

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